

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

MICHAEL SKIDMORE, <i>etc.</i> ,)	No. 16-56057
Plaintiff - Appellant,)	D.C. No. 2:15-cv-03462-RGK-
v.)	AGR
LED ZEPPELIN, <i>et al.</i> ,)	U.S. District Court
Defendants - Appellees.)	Central District of California,
)	Los Angeles
)	
WARNER/CHAPPELL MUSIC, INC.,)	No. 16-56287
Defendant - Appellant,)	
v.)	
MICHAEL SKIDMORE, <i>etc.</i> ,)	
Plaintiff - Appellee.)	
)	

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
HONORABLE R. GARY KLAUSNER, DISTRICT JUDGE PRESIDING

MOTION TO CONSOLIDATE APPEALS

Peter J. Anderson, Esq.
Law Offices of Peter J. Anderson, A P.C.
100 Wilshire Boulevard, Suite 2010
Santa Monica, CA 90401
T: (310) 260-6030 F: (310) 260-6040
Attorney for Defendants-Appellees and
Defendant, Appellee and Appellant
Warner/Chappell Music, Inc.

Helene M. Freeman, Esq.
Philips Nizer LLP
666 Fifth Avenue
New York, NY 10103-0084
T: (212) 977-9700 F: (212) 262-5152
Attorney for Defendants-Appellees
James Patrick Page, Robert Anthony
Plant and John Paul Jones

CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1, counsel for defendants and appellees James Patrick Page, Robert Anthony Plant, John Paul Jones, Atlantic Recording Corporation, Rhino Entertainment Company, Super Hype Publishing, Inc., and Warner Music Group Corp., and defendant, appellee and appellant Warner/Chappell Music, Inc., confirms that:

1. Atlantic Recording Corporation, Rhino Entertainment Company, Super Hype Publishing, Inc., Warner Music Group Corp. and Warner/Chappell Music, Inc., are owned and controlled, directly or indirectly, by AI Entertainment Holdings LLC, an affiliate of Access Industries, Inc., a privately held corporation.
2. Led Zeppelin is the name of a musical group and is not a juridical entity.

Dated: October 17, 2016

/s/ Peter J. Anderson

Peter J. Anderson, Esq.

LAW OFFICES OF PETER J. ANDERSON

A Professional Corporation

Attorney for Defendants and Appellees

JAMES PATRICK PAGE, ROBERT
ANTHONY PLANT, JOHN PAUL JONES,
ATLANTIC RECORDING CORPORATION,
RHINO ENTERTAINMENT COMPANY,
SUPER HYPE PUBLISHING, INC., and
WARNER MUSIC GROUP CORP.
and Defendant, Appellee and Appellant
WARNER/CHAPPELL MUSIC, INC.

MOTION FOR ORDER CONSOLIDATING APPEALS

Pursuant to Federal Rules of Appellate Procedure 3(b)(2) and 27, defendant, appellee and appellant Warner/Chappell Music, Inc. (“Warner/Chappell”) respectfully moves this Honorable Court for an Order consolidating appeals nos. 16-56057 and 16-56287 for briefing and argument.

This Motion is made upon the grounds that consolidation is appropriate and promotes efficiency because:

1. In no. 16-56057, plaintiff, appellant and appellee Michael Skidmore (“Plaintiff”) appeals from the Judgment, entered after jury trial, in favor of Warner/Chappell and defendants and appellees James Patrick Page, Robert Anthony Plant, John Paul Jones, Atlantic Recording Corporation, Rhino Entertainment Company, Super Hype Publishing, Inc., and Warner Music Group Corp. (collectively, with Warner/Chappell, “Defendants”). Plaintiff’s opening brief is due December 30, 2016.

2. In no. 16-56287, Warner/Chappell appeals from the District Court’s post-Judgment Order denying Warner/Chappell’s motions for attorneys’ fees and additional costs. Warner/Chappell’s opening brief is due February 13, 2017.

3. The appeals are likely to be argued at the same time.

Fed. R. App. P. 34(d) (“Unless the court directs otherwise, a cross-appeal or separate appeal must be argued when the initial appeal is argued”).

4. Consolidated briefing is feasible, appropriate and efficient since there is substantial overlap between the two appeals, which are from determinations in the same District Court action and, for example, the background facts and procedural history are the same. In addition, in Plaintiff’s appeal, he challenges rulings of the District Court that Warner/Chappell contends are correct and support its appeal from the District Court’s Order denying Warner/Chappell’s motions for attorneys’ fees and additional costs. Those rulings common to both appeals include, for example, the District Court’s rulings that Plaintiff and his experts failed to rely on the work whose copyright plaintiff sued upon.

5. Consolidation of the briefing of the appeals will not affect Plaintiff’s opening brief due December 30, 2016, and will result in a single and straightforward series of briefing: (1) Plaintiff’s opening brief, December 30, 2016; (2) Defendants’ answering brief and Warner/Chappell’s opening brief, January 30, 2017;

(3) Plaintiff's reply brief and answering brief, March 1, 2017 and
(4) Warner/Chappell's reply brief, March 20, 2017. If the appeals
are not consolidated for briefing, however, the three briefs on
Plaintiff's appeal will proceed separately from the three briefs on
Warner/Chappell's appeal, currently set by the Court as follows:

- Plaintiff-Appellant's opening brief in
no. 16-56057: December 30, 2016
- Defendants-Appellees' answering brief in
no. 16-56057: January 30, 2017
- Defendant-Appellant Warner/Chappell's
opening brief in 16-56287: February 13, 2017
- Plaintiff-Appellant's reply brief in
no. 16-56057: February 16, 2017
- Plaintiff-Appellee's answering brief
in 16-56287: March 15, 2017
- Defendant-Appellant Warner/Chappell's
reply brief in 16-56287: April 3, 2017

See, Time Schedule Orders in 16-56057 (Dkt 1-1) & in 16-56287 (Dkt 1-1),
copies of which are attached as Exhibits 1 & 2 to the accompanying Declaration.

This Motion is made pursuant to Federal Rule of Appellate Procedure 3(b)(2), which provides in pertinent part that “[w]hen the parties have filed separate timely notices of appeal, the appeals may be joined or consolidated by the court of appeals.” *See, also* Advisory Comm. Notes (1967) Fed. R. App. P. 3(b)(2) (the foregoing sentence was “added to encourage consolidation of appeals whenever feasible”).

The Defendants other than Warner/Chappell consent to the consolidation of the two pending appeals.

This Motion is necessary because counsel for plaintiff, appellant and appellee has advised that he declines, for reasons he did not disclose, to stipulate to consolidation of these appeals. *See*, the accompanying Declaration at 8, ¶ 8, & attached Exhibit 3.

Respectfully submitted,

Dated: October 17, 2016

/s/ Peter J. Anderson

Peter J. Anderson, Esq.

LAW OFFICES OF PETER J. ANDERSON

A Professional Corporation

Attorney for Defendants and Appellees

JAMES PATRICK PAGE, ROBERT

ANTHONY PLANT, JOHN PAUL JONES,

ATLANTIC RECORDING CORPORATION,

RHINO ENTERTAINMENT COMPANY,

SUPER HYPE PUBLISHING, INC., and

WARNER MUSIC GROUP CORP.

and Defendant, Appellee and Appellant

WARNER/CHAPPELL MUSIC, INC.

Helene M. Freeman, Esq.
PHILIPS NIZER LLP
Attorney for Defendants-Appellees
JAMES PATRICK PAGE,
ROBERT ANTHONY PLANT
and JOHN PAUL JONES

CERTIFICATE OF COMPLIANCE

This Motion complies with the page limitation of Federal Rule of Appellate Procedure 27(d)(2) because this Motion, exclusive of the supporting Declaration, is less than 20 pages in length. This Motion also complies with Rule 27(d)(1)(E) and the typeface requirements of Rule 32(a)(5) and the type style requirements of Rule 32(a)(6) because this Motion has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point type size in New Times Roman type style.

Dated: October 17, 2016

/s/ Peter J. Anderson

Peter J. Anderson, Esq.

LAW OFFICES OF PETER J. ANDERSON

A Professional Corporation

Attorney for Defendants and Appellees

JAMES PATRICK PAGE, ROBERT
ANTHONY PLANT, JOHN PAUL JONES,
ATLANTIC RECORDING CORPORATION,
RHINO ENTERTAINMENT COMPANY,
SUPER HYPE PUBLISHING, INC., and
WARNER MUSIC GROUP CORP.
and Defendant, Appellee and Appellant
WARNER/CHAPPELL MUSIC, INC.

DECLARATION OF PETER J. ANDERSON

I, Peter J. Anderson, declare and state:

1. I am an attorney admitted to practice before this Court and all Courts of the State of California. I have personal knowledge of the following facts and I could competently testify to these facts if called upon to do so.

2. I represent defendants and appellees James Patrick Page, Robert Anthony Plant, John Paul Jones, Atlantic Recording Corporation, Rhino Entertainment Company, Super Hype Publishing, Inc., and Warner Music Group Corp., and defendant, appellee and appellant Warner/Chappell Music, Inc. (“Warner/Chappell”) (collectively, “Defendants”).

3. This Declaration is submitted in support of Warner/Chappell’s Motion for an Order consolidating appeal nos. 16-56057 and 16-56287.

4. In no. 16-56057, plaintiff Michael Skidmore appeals from the Judgment entered by the District Court for the Central District of California, Case No. 2:15-cv-03462-RGK-AGR, after trial and jury verdict in Defendants’ favor.

5. After the District Court’s entry of Judgment in Defendants’ favor, Warner/Chappell filed in that same action its motion for the award of attorneys’ fees and motion for the award of additional costs not taxable by the Clerk. In no. 16-56287, Warner/Chappell appeals from the District Court’s Order deny-

ing those two motions. The District Court did not hold a hearing on those motions and, as a result, there are no additional reporter's transcripts in no. 16-56287 beyond those in no. 16-56057.

6. Attached to this Declaration as Exhibits 1 and 2 are, respectively, the Court's Time Schedule Order dated July 25, 2016 in no. 16-56057 and the Court's Time Schedule Order dated September 7, 2016 in 16-56287. As a result of those Orders and with three days added by Federal Rule of Appellate Procedure 26(c) to the deadline to file reply briefs, the currently scheduled dates in these appeals are:

- Plaintiff-Appellant's opening brief (16-56057): . . . December 30, 2016
- Defendants-Appellees' answering brief (16-56057): January 30, 2017
- Defendant-Appellant Warner/Chappell's opening brief (16-56287): February 13, 2017
- Plaintiff-Appellant's reply brief (16-56057): February 16, 2017
- Plaintiff-Appellee's answering brief (16-56287): March 15, 2017
- Defendant-Appellant Warner/Chappell's reply brief (16-56287): April 3, 2017

7. The court reporter is not in default with regard to any designated transcripts.

8. The Defendants other than Warner/Chappell consent to the consolidation of the two pending appeals.

9. On September 13, 2016, I sent Francis Malofiy, Esq., counsel for plaintiff, appellant and appellee, an e-mail asking whether he would stipulate to the consolidation of the two pending appeals. I included that, to avoid any delay in the briefing, we could ask the Court to retain the current due date of the opening brief in the first-filed appeal. Eventually, Mr. Malofiy advised me on September 23, 2016, by e-mail that he will not stipulate to consolidation. He did not provide a reason. Attached to this Declaration as Exhibit 3 is a true and correct copy of the e-mails we exchanged.

I declare under penalty of perjury that the foregoing is true and correct. Executed on October 17, 2016 in Los Angeles County, California.

/s/ Peter J. Anderson
PETER J. ANDERSON

CERTIFICATE OF SERVICE

I hereby certify that on October 17, 2016, I electronically filed the foregoing document with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF System.

Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

I further certify that at least one of the counsel for each participant in the case is a registered CM/ECF user.

Dated: October 17, 2016

/s/ Peter J. Anderson
PETER J. ANDERSON

EXHIBIT 1

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

JUL 25 2016

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

MICHAEL SKIDMORE, AS
TRUSTEE FOR THE RANDY
CRAIG WOLFE TRUST,

Plaintiff - Appellant,

v.

LED ZEPPELIN; JAMES PATRICK
PAGE; ROBERT ANTHONY
PLANT; JOHN PAUL JONES;
SUPER HYPE PUBLISHING, INC.;
WARNER MUSIC GROUP
CORPORATION;
WARNER/CHAPPELL MUSIC, INC;
ATLANTIC RECORDING
CORPORATION; RHINO
ENTERTAINMENT COMPANY,

Defendants - Appellees.

No. 16-56057

D.C. No. 2:15-cv-03462-RGK-AGR
U.S. District Court for Central
California, Los Angeles

TIME SCHEDULE ORDER

The parties shall meet the following time schedule.

If there were reported hearings, the parties shall designate and, if necessary, cross-designate the transcripts pursuant to 9th Cir. R. 10-3.1. If there were no reported hearings, the transcript deadlines do not apply.

Mon., August 1, 2016

Mediation Questionnaire due. If your registration for Appellate ECF is confirmed after this date, the Mediation Questionnaire is due within one day of

receiving the email from PACER confirming your registration.

Mon., August 22, 2016

Transcript shall be filed by court reporter.

Mon., August 22, 2016

Transcript shall be ordered.

Fri., December 30, 2016

Appellant's opening brief and excerpts of record shall be served and filed pursuant to FRAP 32 and 9th Cir. R. 32-1.

Mon., January 30, 2017

Appellees' answering brief and excerpts of record shall be served and filed pursuant to FRAP 32 and 9th Cir. R. 32-1.

The optional appellant's reply brief shall be filed and served within fourteen days of service of the appellees' brief, pursuant to FRAP 32 and 9th Cir. R. 32-1.

Failure of the appellant to comply with the Time Schedule Order will result in automatic dismissal of the appeal. See 9th Cir. R. 42-1.

FOR THE COURT:
Molly C. Dwyer
Clerk of Court

Dusty James Witt
Deputy Clerk

EXHIBIT 2

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

SEP 07 2016

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

MICHAEL SKIDMORE, AS
TRUSTEE FOR THE RANDY
CRAIG WOLFE TRUST,

Plaintiff - Appellee,

v.

LED ZEPPELIN; JAMES PATRICK
PAGE; ROBERT ANTHONY
PLANT; JOHN PAUL JONES;
SUPER HYPE PUBLISHING, INC.;
WARNER MUSIC GROUP
CORPORATION,

Defendants,

ATLANTIC RECORDING
CORPORATION; RHINO
ENTERTAINMENT COMPANY,

Defendants,

and

WARNER/CHAPPELL MUSIC, INC.,

Defendant - Appellant.

No. 16-56287

D.C. No. 2:15-cv-03462-RGK-AGR
U.S. District Court for Central
California, Los Angeles

TIME SCHEDULE ORDER

The parties shall meet the following time schedule.

If there were reported hearings, the parties shall designate and, if necessary, cross-designate the transcripts pursuant to 9th Cir. R. 10-3.1. If there were no reported hearings, the transcript deadlines do not apply.

Wed., September 14, 2016 Mediation Questionnaire due. If your registration for Appellate ECF is confirmed after this date, the Mediation Questionnaire is due within one day of receiving the email from PACER confirming your registration.

Thu., October 6, 2016 Transcript shall be ordered.

Wed., January 4, 2017 Transcript shall be filed by court reporter.

Mon., February 13, 2017 Appellant's opening brief and excerpts of record shall be served and filed pursuant to FRAP 32 and 9th Cir. R. 32-1.

Wed., March 15, 2017 Appellee's answering brief and excerpts of record shall be served and filed pursuant to FRAP 32 and 9th Cir. R. 32-1.

The optional appellant's reply brief shall be filed and served within fourteen days of service of the appellee's brief, pursuant to FRAP 32 and 9th Cir. R. 32-1.

Failure of the appellant to comply with the Time Schedule Order will result in automatic dismissal of the appeal. See 9th Cir. R. 42-1.

FOR THE COURT:
Molly C. Dwyer
Clerk of Court

Dusty James Witt
Deputy Clerk

EXHIBIT 3

From: Peter J. Anderson [mailto:pja@pjanderson.com]
Sent: Tuesday, September 13, 2016 12:42 PM
To: Malofiy, Francis Alexander
Cc: Helene M. Freeman; 'Glen Kulik'; 'AJ Fluehr'
Subject: Skidmore

Francis:

I'm writing to ask whether you will stipulate to an order consolidating the two pending appeals. That should result in a total of four briefs rather than the six briefs if the appeals are not consolidated, and as you may know the court prefers consolidation. Also, if you prefer we could ask that the court retain your opening brief deadline for the consolidated appeals.

I look forward to hearing from you.

Best regards.

Peter.

The Law Offices of Peter J. Anderson
A Professional Corporation
100 Wilshire Boulevard
Suite 2010
Santa Monica, CA 90401
Telephone: (310) 260-6030
Fax: (310) 260-6040

THE INFORMATION IN THIS E-MAIL IS INTENDED FOR THE PERSON OR PERSONS INDICATED ABOVE AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, CONFIDENTIAL OR OTHERWISE PROTECTED FROM DISCLOSURE BY LAW. IF YOU ARE NOT THE PERSON OR PERSONS INDICATED ABOVE, YOU ARE PROHIBITED FROM DISCLOSING, DISTRIBUTING OR COPYING THIS E-MAIL AND ANY ATTACHMENTS AND YOU ARE REQUESTED TO PLEASE NOTIFY US IMMEDIATELY BY E-MAIL OR TELEPHONE THAT YOU RECEIVED THIS E-MAIL AND TO PLEASE DELETE THIS E-MAIL AND ANY ATTACHMENTS.

From: Peter J. Anderson [mailto:pja@pjanderson.com]
Sent: Wednesday, September 21, 2016 5:41 PM
To: Malofiy, Francis Alexander
Cc: Helene M. Freeman; 'Glen Kulik'; 'AJ Fluehr'
Subject: RE: Skidmore

I'm following up on my e-mail below. Could you (or Glen or AJ) please respond?

From: Peter J. Anderson [mailto:pja@pjanderson.com]
Sent: Tuesday, September 13, 2016 12:42 PM
To: Malofiy, Francis Alexander
Cc: Helene M. Freeman; 'Glen Kulik'; 'AJ Fluehr'
Subject: Skidmore

Francis:

I'm writing to ask whether you will stipulate to an order consolidating the two pending appeals. That should result in a total of four briefs rather than the six briefs if the appeals are not consolidated, and as you may know the court prefers consolidation. Also, if you prefer we could ask that the court retain your opening brief deadline for the consolidated appeals.

I look forward to hearing from you.

Best regards.

Peter.

The Law Offices of Peter J. Anderson
A Professional Corporation
100 Wilshire Boulevard
Suite 2010
Santa Monica, CA 90401
Telephone: (310) 260-6030
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From: Francis Alexander Malofiy [mailto:francis@francisalexander.com]
Sent: Wednesday, September 21, 2016 5:43 PM
To: Peter J. Anderson; Helene M. Freeman
Cc: Francis Alexander Malofiy; AJ Fluehr; Glen Kulik
Subject: RE: Skidmore

Dear Peter,

I will follow up with you on Friday at some point with our position.

NOTE: ADDRESS CHANGED TO “SUITE 1”

With every good wish, I am,

Francis Malofiy, Esquire
Francis Alexander, LLC
280 N. Providence Road | Suite 1
Media, PA 19063
T: (215) 500-1000
F: (215) 500-1005
E: francis@francisalexander.com

From: Francis Alexander Malofiy [mailto:francis@francisalexander.com]
Sent: Friday, September 23, 2016 5:02 PM
To: Peter J. Anderson; Helene M. Freeman
Cc: Francis Alexander Malofiy; AJ Fluehr; Glen Kulik
Subject: RE: Skidmore

Dear Peter,

We will not agree to stipulate to an order consolidating the two pending appeals.

NOTE: ADDRESS CHANGED TO "SUITE 1"

With every good wish, I am,

Francis Malofiy, Esquire
Francis Alexander, LLC
280 N. Providence Road | Suite 1
Media, PA 19063
T: (215) 500-1000
F: (215) 500-1005
E: francis@francisalexander.com